

VICENTE HERNANDEZ, §
§
VS. § CIVIL ACTION NO.4:10-CV-433-Y
§
RICK THALER, §
Director, T.D.C.J. §
Correctional Institutions Div. §

Petitioner Vicente Hernandez's petition for writ of habeas corpus under 28 U.S.C. § 2254 is DENIED.

Hernandez's June 18, 2010, motion for leave to proceed in *foram pauperis* (doc. 2) is DENIED as moot.

Certificate of Appealability

Federal Rule of Appellate Procedure 22 provides that an appeal may not proceed unless a certificate of appealability (COA) is issued under 28 U.S.C. § 2253.¹ Rule 11 of the Rules Governing Section 2254 Proceedings now requires that the Court "must issue or deny a certificate of appealability when it enters a final order adverse to the applicant."² The COA may issue "only if the applicant has made a substantial showing of the denial of a constitutional right."³ A petitioner satisfies this standard by showing "that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists of reason could conclude the issues presented are adequate to deserve encouragement to proceed further."⁴

Upon review and consideration of the record in the above-referenced case as to whether petitioner Hernandez has made a showing that reasonable jurists would question this Court's rulings, the Court determines he has not and that a certificate of appealability should not issue for the reasons stated in the December 15, 2010, Findings, Conclusions, and Recommendation of the

¹See Fed. R. App. P. 22(b).

²RULES GOVERNING SECTION 2254 PROCEEDINGS IN THE UNITED STATES DISTRICT COURTS, RULE 11(a) (December 1, 2009).

³28 U.S.C.A. § 2253(c)(2) (West 2006).

⁴*Miller-El v. Cockrell*, 537 U.S. 322, 326 (2003), *citing Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

United States Magistrate Judge.⁵

Therefore, a certificate of appealability should not issue.

SIGNED December 28, 2010.


TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

⁵See Fed. R. App. P. 22(b); see also 28 U.S.C.A. § 2253(c)(2) (West 2006).